Petition

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NO. 81-810

IN THE

Supreme Court of the United States

October Term, 1981

JACK G. NUNN, FRANCES NUNN, IRIS CAMPBELL, AND MARIE RICHARDSON,

Petitioners,

v.

F. D. BLACK, IRVIN RECTOR, MARSHALL E. GOARD, LOCAL TRUSTEES; W. S. KIDD, JR., PASTOR; ALLEN DAVIS, STATE OVERSEER; M.A. TOMLINSON, LEONARD F. KENDRICK, HENRY O'NEAL, BILLY MURRAY, M. T. LINKOUS, GENERAL TRUSTEES, OF THE CHURCH OF GOD OF PROPHECY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

James W. Haskins
60 West Church Street
Martinsville, Virginia 24112
(703) 638-2367

Counsel for Petitioners

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA (804) 643-7789

QUESTIONS PRESENTED FOR REVIEW

The Complaint, Appendix D, infra, pp.72 through 100, brought pursuant to 42 U.S.C. §1983, alleged that the Plaintiffs were denied their First Amendment right of freedom of religion by the Defendants, Black, Rector and Goard, referred to as Local Trustees, acting as the agents of all other named Defendants, charging Plaintiffs with trespassing upon the premises of the Church of God of Prophecy, Collinsville, Virginia, during worship services on November 8th and 12th of 1978. Plaintiffs were subsequently arrested, prosecuted and convicted of violating Virginia's trespass law, Appendix D, infra, p. 72, in the General District Court of Henry County, Virginia. Plaintiffs noted an appeal to the Circuit Court of Henry County, where the charges

were nolle prosequi on motion of the Commonwealth's Attorney for Henry County, Virginia. The Complaint further alleged that the Local Trustees acted under color of statutorily created and court conferred authority of Virginia Code Section 57-7, et seq., Appendix C, infra, pp. 62 through 63. The Complaint was dismissed on the pleadings as not setting forth a deprivation of constitutional rights under color of state law. The questions thus presented are:

(1) Whether the Plaintiffs' prosecution and conviction for criminal trespass for their alleged peaceful presence at worship services constitutes a deprivation of freedom of religion guaranteed by the First Amendment.

(2) Whether Defendants Black, Rector and Goard, alleged agents of all

other Defendants, acted under color of state law by swearing to criminal warrants for trespass in their capacities as Trustees of the local Church of God of Prophecy, positions created by state statute and conferred by a state court for the purpose of facilitating the congregation's holding of real property for public worship, thereby subjecting Plaintiffs to prosecution and conviction for violation of the trespass law of the Commonwealth of Virginia.

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OPINIONS BELOW

The opinion of the District Ccurt for the Western District of Virginia is reported at 506 F.Supp. 444 (W.D.Va.1981) and appears as Appendix A, infra, pp. The opinion of the United States Court of Appeals for the Fourth Circuit affirming the District Court is unpublished and appears as Appendix B, infra, pp.

GROUNDS FOR JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered August 4, 1981. This Petition was filed within ninety (90) days of August 4, 1981.

Jurisdiction is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES

The following amendments to the United States Constitution provide in pertinent part:

AMENDMENT I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT XIV: ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law...

42 U.S.C. §1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person, within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for relief.

The following provisions of Title 57 of the Code of Virginia are extensive and are set forth in pertinent part in Appendix C, infra, pp. 56 through 71:

§57-1, and §57-7 through §57-15.

STATEMENT OF THE CASE

The §1983 Complaint, brought under 28 U.S.C. §1343(3), alleged that in May of 1978 a dispute arose between Plaintiffs and other members of the Church of God of Prophecy concerning glossolalia. Some members of the Church contended that Plaintiffs' speaking was not of the true Spirit resulting in Plaintiffs' expulsion from membership by Church authorities. Following the expulsion, Plaintiffs continued to attend worship services. Plaintiffs contend their presence at worship services following May of 1978 was peaceful and non-disruptive. Nevertheless, in November of 1978, Plaintiffs were served with written notification that if they returned to the Church of God of Prophecy

criminal trespass warrants would be issued for their arrest. Plaintiffs attended services on the 8th and 12th of November and following each occasion they were served with warrants charging trespass and arrested.

The Complaint alleges that prior to the issuance of the warrants, Church officials consulted the Sheriff of Henry County, Virginia and were advised by him to obtain the trespass warrants. The warrants were served by deputy sheriffs of Henry County, Virginia and the Plaintiffs were prosecuted by the Commonwealth's Attorney before the Judge of the General District Court of Henry County, who convicted them of trespass on the occasions stated. Following their convictions in the General District Court, an appeal was noted to the Circuit

Court of Henry County where the Commonwealth's Attorney moved to nolle prosequi the charges. The motion was granted by the Judge of the Circuit Court of Henry County, Virginia.

The Courts below held that the above recited facts failed to allege a deprivation of a constitutional right under color of state law. Plaintiffs submit that the Courts below completely failed to address the critical issue, i.e., the right of an individual to be present at worship services on property held in trust for public worship. (See, Appendix D, infra, pp. 62). The Complaint does not allege that membership is the deprivation involved. The deprivation is subjecting Plaintiffs to criminal trespass for their presence

at worship services on property held in trust for public worship by operation of state law. The opinions of the Courts below essentially addressed membership and the Church's action in expelling the Plaintiffs from membership in the Church. Plaintiffs make no issue of whether or not membership in a church is a constitutionally protected right. Plaintiffs, however, contend that they have the right to be present at a church being held by trustees appointed by a state court pursuant to a statutory scheme for the control and use of property for "public worship". Plaintiffs assert that under these circumstances the prosecution for their presence and peaceful attendance at worship services is a deprivation of their First Amendment

freedom of religion under color of state law.

ARGUMENT FOR ALLOWANCE OF A WRIT

1. THE DECISION OF THE FOURTH CIRCUIT IN THE CASE UNDER CONSIDERATION THAT PLAINTIFFS' COMPLAINT ALLEGED NO DEPRIVATION OF THE FIRST AMENDMENT FREEDOM OF RELIGION IS IN DIRECT CONFLICT WITH A DECISION OF THE EIGHTH CIRCUIT ON THE SAME SUBJECT MATTER:

The Eighth Circuit in Action v. Gannon, 450 F.2d 1227 (1971), held that non-member demonstrators who interrupted a worship service by marching and sign carrying could be enjoined from entering the premises of the church during worship services for the purpose of disrupting services but could not be completely barred from being on the church facility if their purpose was simply to sit quietly and worship. The Court concluded that a complete bar would be a deprivation of the First

Amendment guarantee of freedom of religion. Id. 1238.

Plaintiffs respectfully submit that the Gannon decision is in direct conflict with the effect of the Fourth Circuit's holding that peaceful presence at worship services can be prosecuted in the state criminal courts through institution of trespass proceedings. It is Plaintiffs' contention that their alleged prosecution and conviction for trespass based on their peaceful attendance at worship services constitutes a deprivation of freedom of religion. Gannon stands for the proposition that peaceful attendance at worship services cannot be barred. Plaintiffs assert that likewise peaceful attendance at worship services cannot be the basis for criminal trespass.

2. THE DECISION OF THE FOURTH CIRCUIT IN THE CASE UNDER CONSIDERATION HOLDING THAT THE ALLEGED ACTIONS OF DEFENDANTS WERE NOT UNDER COLOR OF STATE LAW, IS IN CONFLICT WITH A DECISION OF THE FIFTH CIRCUIT ON THE SAME SUBJECT:

Plaintiffs contend that the institution of criminal trespass charges and subsequent prosecution and conviction in the criminal courts of the Commonwealth of Virginia by Commonwealth law enforcement officials was so intimately involved with the Church expulsion proceedings as to constitute state participation in those acts. The Defendants in effect resorted to the state criminal justice system to enforce its membership expulsion decision.

This scenario is not unlike that addressed by the Fifth Circuit in Sims v. Jefferson Powers, Inc., 611 F.2d 609 (1980). Sims, a horseman and state

licensed jockey's agent, filed a §1983 action alleging deprivation of his First Amendment freedom of speech and association. He alleged that he was ejected from a state licensed private race track and subjected to arrest and track expulsion proceedings because he attempted to organize horse traders into an association and because he publicly and privately criticized the track management. The Defendant's motion for summary judgment argued that Sims' expulsion and arrest for his presence on the track grounds were private, non-state actions within its proprietary rights, and that the contemporaneous actions of state track stewards in suspending Sims were admittedly acts of the state but entirely independent from the conduct of Jefferson

Powers and, therefore, not chargeable to Jefferson Powers as state action.

In reversing the District Court's granting of Defendant's motion for summary judgment, the Fifth Circuit said:

> "The difficulty with the reliance by Jefferson Powers upon these abstract propositions is that it has made no factual showing to contrevene Sims' allegations that Jefferson Powers had ejected him from its track in deprivation of rights of freedom of speech and assembly guaranteed him by the First and Fourteenth Amendments under the color of the state's statutes regulating horse racing, La.R.S. 4:141-883, indicating, inter alia, that the racing commission stewards had participated with Jefferson Powers in this action. Furthermore, in the exhibits attached to the interrogatories filed by the co-defendant racing commission there are substantial factual indicia that Jefferson Powers had availed itself of the commission's regulatory powers in aid of its expulsion of Sims from its track, particularly through the track stewards, state regulatory agents, all three of whom however were paid by Jefferson Powers." Supra, 612, 613.

> "...the action of the state racing commission or its stewards--if we construe the disputed facts most favorable to the Plaintiff as required for summary judgment review purposes--was so intimately involved with the track management's private act of expelling Sims as to constitute state participation in the challenged act." Supra, 613.

Similarly, in the case before the Court, officials of the Church of God of Prophecy availed themselves of the Commonwealth of Virginia's investiture of trustee status upon certain of them to enforce the Church's membership expulsion of the Plaintiffs through prosecution under the Commonwealth of Virginia's trespass law. The subsequent involvement by the Sheriff of the County of Henry, the prosecutor and the General District Court Judge in convicting Plaintiffs, clearly demonstrate intimate involvement by state officials

with the Church authorities' act of expelling Plaintiffs from membership in the Church.

Plaintiffs respectfully submit that when trustees of property held for public worship secure trespass warrants and the state thereafter prosecutes and the state courts convict individuals for their presence at worship services without proof of conduct amounting to breach of the peace, there has been a deprivation of First Amendment freedom of religion under color of state law.

3. THE FOURTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT:

This case presents an issue of first impression in attempting to discern the meaning of the First Amendment in the context of criminal trespass actions

by Church officials against expelled members. The lower courts' decisions characterizing Plaintiffs' Complaint as simply an effort to seek review of membership expulsion stemming from a doctrinal dispute evades this critical issue and thereby impliedly endorses resort to the criminal process by church officials when internal church conflicts arise without defining the parameters of state court involvement consistent with the First Amendment guarantee of freedom of religion. Plaintiffs respectfully submit that this Honorable Court should define those parameters.

The Complaint did not seek resolution of a doctrinal dispute but rather a review of the propriety of local church officials resorting to the criminal trespass statute of Virginia for

enforcement of an expulsion decision under color of state statutory scheme for the management and use of property held for public worship.

The decisions of the Courts below in effect proclaim that church officials authorized by state law to hold property for public worship may prosecute individuals, members or non-members, for their attendance at worship services. This Honorable Court should decide when and if such action is compatible with the dictates of the First Amendment guarantee of freedom of religion.

Plaintiffs assert that criminal process cannot lie for attendance at worship services unless and until evidence is adduced to prove the imminence of disorder and that an individual's

mere attendance and presence, however obnoxious or unpleasant to others, does not amount to a circumstance adequate for instrusion by the state criminal courts.

4. ALTHOUGH THE PRECISE ISSUE OF DEPRIVATION OF FREEDOM OF RELIGION BY PROSECUTION FOR CRIMINAL TRESPASS IS ONE OF FIRST IMPRESSION FOR THIS HONORABLE COURT, THE DECISIONS BELOW CONFLICT WITH APPLICABLE PRINCIPLES PREVIOUSLY DECIDED BY THE SUPREME COURT:

While consistently holding that review by the courts of doctrinal and procedural disputes within a church is prohibited by the First Amendment, this Court has reviewed the principles of decision applied by lower courts in cases involving church disputes for compatibility with the dictates of the First Amendment. Kedroff, et al v. St. Nicholas Cathedral of Russian Orthodox

Church in North America, 344 U.S. 94, 73 S.Ct. 143 (1952); Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S.Ct. 601 (1969); Maryland and Virginia Churches v. Sharpsburg Church, 396 U.S. 367, 90 S.Ct. 499 (1970); Jones v. Wolf, 99 S.Ct. 3020 (1970); Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich, 426 U.S. 707, 96 S.Ct. 2372 (1976). Plaintiffs sought a review of the state criminal courts involvement in this dispute--not a review of the doctrines and procedures of the Church of God of Prophecy. The lower courts' refusal to address the questions presented by the involvement of the state criminal process in the dispute described in Plaintiffs' Complaint results in a

sanctioning of intrusion of the "power of the state" into the area of religious freedom without scrutiny for compliance with the First Amendment. Kedroff, supra, 156.

This Honorable Court has long recognized Virginia's Act for Religious Freedom, Virginia Code §57-1, as particularly insightful in understanding the First Amendment. McGallow v. State of Maryland, 366 U.S. 420, 81 S.Ct. 1101. The Act in pertinent part states:

> "... it is time enough for the rightful purpose of civil government, for its offices to interfere, when principles break out into overt acts against peace and good order...", supra.

Plaintiffs respectfully submit that the lower courts' decisions ignore applicable principles of this Honorable Court which recognize that a state's

involvement in church related issues must be reviewed for compatibility with the dictates of the First Amendment.

5. THE FOURTH CIRCUIT'S DECISION FINDING DEFENDANTS' ACTIONS WERE NOT UNDER COLOR OF STATE LAW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT:

Plaintiffs submit that the decision of the court below is in conflict with this Court's decision in Adickes v. S. H. Kress & Co., 90 S.Ct. 1598, 398 U.S. 144 (1970):

> "Although this is a lawsuit against a private party, not the state or one of its officials, our cases make clear that petitioner will have made out a violation of her Fourteenth Amendment rights and will be entitled to relief under 1983 if she can prove that a Kress employee, in the course of employment, and a Hattiesburg policeman somehow reached an understanding to deny Mrs. Adickes service in the Kress store, or to cause her subsequent arrest because she was a white person in the company of Negroes." Id, 1605, 152.

In the instant case, the Complaint alleges that the Defendants were instructed by the Sheriff of Henry County to obtain the warrant; that the Plaintiffs were prosecuted by the Commonwealth's Attorney; and that Plaintiffs were convicted by the Judge of the General District Court of Henry County. It cannot be reasonably concluded that the Defendants and state officials did not reach an understanding to prosecute and deny the Plaintiffs the freedom to be present in the Church of God of Prophecy for the purpose of worship.

The Fourth Circuit's decision is also in conflict with Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 155 98 S. Ct. 1729 (1978), in that the critical indicia defined in Flagg for identifying

state action is alleged in Plaintiffs' Complaint or is fairly inferred therefrom, i.e.: (1) Plaintiffs have no other remedy for resolving this dispute particularly in view of the nolle prosequi of the trespass charges on appeal; (2) there is an allegation of participation of public officials with Defendants; and (3) the Commonwealth of Virginia did not merely acquiesce in the Defendants' expulsion proceeding, in the case before the Court the state placed its imprimatur on the expulsion by a trespass conviction in a state criminal court.

CONCLUSION

Considering the liberal construction required of the Civil Rights Act, Petitioners respectfully submit their Complaint alleged a deprivation of freedom of religion by the Defendants under color of state law. Petitioners, therefore, respectfully submit that a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted.

James W. Haskins
Attorney for Petitioners
60 West Church Street
Post Office Box 72
Martinsville, Virginia 24114
(703) 638-2367

BY: James W. Haskins
James W. Haskins

CERTIFICATE

In accordance with Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I am admitted to practice before the Supreme Court of the United States and that I have this 30th day of October, 1981, filed the required copies of Petitioners' Petition for Writ of Certiorari in the Clerk's Office in Washington, D.C., and have mailed the required copies of said Petition for Writ of Certiorari to Mr. J. Grady Monday, Esquire, of MONDAY & MONDAY, Post Office Box 1147, Martinsville, Virginia, 24114.

James W. Haskins

James W. Haskins
Attorney for Petitioners

THE APPENDIX

APPENDIX A:

Final Order and Memorandum Opinion in the United States District Court for the Western District of Virginia.

APPENDIX B:

Unpublished Opinion of the United States Fourth Circuit Court of Appeals, August 4, 1981.

APPENDIX C:

Pertinent Portions of Title 57 of the Code of Virginia.

APPENDIX D:

Section 18.2-119 of the Code of Virginia.

APPENDIX E:

Complaint and Attached Exhibits.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

JACK G. NUNN, et als,)
Plaintiffs)
)
vs.) CIVIL ACTION NO.
) 80-0065(D)
F. D. BLACK, et als,)
Defendants) O R D E R

In accordance with written Memorandum Opinion this day entered, it is ADJUDGED and ORDERED that:

1) defendants' motion to dismiss is granted

2) this case is dismissed and stricken from the docket, and each party is to pay their own costs.

ENTER:

Ted Dalton
United States District Judge

January 13, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

JACK G. NUNN, et als, Plaintiffs,	)	CIVIL ACTION NO. 80-0065(D)
vs.	)	MEMORANDUM OPINION
F. D. BLACK, et als, Defendants	)	By: Ted Dalton U. S. District Judge

The plaintiffs in the present litigation are dissident members of the Church of God of Prophecy in Collinsville, Virginia. They bring this action against the General Trustees, the General Overseer of the World-Wide Church Organization, the State of Virginia General Overseer, the local church trustees, and the local minister, alleging that the plaintiffs were denied rights secured by the First, Fifth, and Fourteenth Amendments under color of state law. The

jurisdiction of the court is invoked under 28 U.S.C. §1343, with the plaintiffs seeking relief from alleged violations of their constitutional rights as provided by 42 U.S.C. §1983. In general, the plaintiff's assert that they were unlawfully expelled from church membership at a congregational meeting and that they were later arrested for trespassing after having been warned to stay off the property.

Specifically, the plaintiffs allege in their complaint that a dispute arose between the defendants and the plaintiffs concerning the authenticity of the plaintiffs' "glossolalia," or speaking in tongues. Apparently, one of the tenets of the Church of God of Prophecy is the belief that the Holy Spirit can inspire and motivate a person to

spontaneously speak in tongues. The plaintiffs allege that as a result of this controversy, a meeting was convened in the Collinsville Church on March 5, 1978 with Defendants W. S. Kidd, Jr. and Allen Davis presiding. According to the complaint, the purpose of the meeting was to divest plaintiffs of their membership in the Church. At this time, the plaintiffs were allegedly informed that unless they recanted and admitted that their beliefs in the authenticity of their glossolalia were erroneous, a vote to expel them would be taken. The plaintiffs further allege that they were not provided with an opportunity to respond and thus justify their beliefs. The expulsion vote was subsequently taken by Defendant Davis, with ten members standing to favor removal,

while two members indicated to the contrary that they favored retaining the plaintiffs as members. The plaintiffs allege that a determination of the qualifications of those members present and voting at the meeting as apparently required by Church law was never conducted by defendants. Enumerating the alleged procedural improprieties, the plaintiffs noted that Defendant Davis testified in a state court proceeding that he counted all who remained seated as favoring expulsion. The plaintiffs further assert that the expulsion vote "was taken even though the governing law of the Church of God of Prophecy provides that no votes are to be taken in resolution of disputes, but rather all matters are to be resolved by unanimous consent."

According to their complaint, the plaintiffs continued to attend church services after the expulsion vote was taken. Between November 5, 1978 and November 8, 1978, the plaintiffs allegedly were served with a notice threatening criminal prosecution for trespassing if they returned to the Church. As a result of the plaintiffs' attendance on November 8, 1978, and November 12, 1978, warrants were sworn out by the Local Church Trustees. After their conviction in the General District Court of Henry County, the plaintiffs were nolle prossed upon appeal.

In addition, the complaint declares that according to Section 57-7 of the 1950 Code of Virginia, as amended, the plaintiffs, along with the other members

of the congregation, are the beneficial owners of the Church property and Defendant Trustees F. D. Black, Irvin Rector and Marshall E. Goard hold only legal title for the benefit of the congregation members. Accordingly, the plaintiffs contend that as they had contributed considerable sums of money to the construction, maintenance, and upkeep of the Church property, the acts of the defendants in the expulsion and criminal trespass prosecutions denied the plaintiffs of their beneficial interest in the Church without due process of law. The complaint stipulates that the defendants have damaged them by subjecting them to ridicule by the arrest proceedings and prosecution. It is further alleged that Defendant M. A. Tomlinson, General

Overseer of the Church, through his agents, has denied the plaintiffs the right to freedom of religion, freedom of speech and the right to the enjoyment of the property held for their benefit by using the authority vested in them by the State of Virginia and the governing laws of the Church of God of Prophecy and by resort to the state criminal process.

Finally, the plaintiffs pray that the court issue a preliminary injunction restraining the defendants and their agents from instituting criminal action for trespass on Church property against them with "such time as hearings in accordance with the dictates of the due process clause of the Fifth and Fourteenth Amendments are complied with." In addition, the plaintiffs request that

an award of two and one half million dollars in punitive damages and costs be awarded to them.

The defendants responded in their motion to dismiss. Specifically, the defendants moved this court to dismiss the action because the complaint failed to state a claim upon which relief can be granted. In this regard, the defendants contend that the present litigation is merely an attempt "to make a federal constitutional issue out of nothing more than a doctrinal dispute between the established Church and the plaintiffs resulting in their expulsion from membership because of their disruptive behavior during regular Church services." The defendants further contend that State and Federal Courts have traditionally refused to become involved in doctrinal

disputes, and have refused to subject ecclesiastical matters similar to the present controversy to judicial inquiry. The defendants further assert that there is no property right in church membership; rather every person entering in a religious organization impliedly promises to conform to the organization's rules and to submit to its authority. Therefore, the defendants conclude that the plaintiffs have no right to insist on their rights as members where such assertion would invade the rights of the remaining members or those of the collective itself.

Secondly, the defendants argue to dismiss the action on the ground that the complaint fails to allege the loss of a privilege secured by the Constitution or by Federal law. For reasons

similar to the defendants' first two substantive objections, they pray that this court deny the plaintiffs' request for a preliminary injunction. Lastly, the defendants request that this court dismiss the action or quash the service of process as to defendants M. A. Tomlinson, Leonard F. Kendrick, Henry O'Neal, Billy Murray, and M. T. Linkous, on the grounds that as residents of Tennessee, they are not subject to service of process within the Western District of Virginia.

After study of the extensive and well researched memoranda of law submitted by both parties concerning the defendants' motion to dismiss, the court feels that a ruling on the motion is appropriate. In view of the authority

discussed below, it is evident this court is compelled to grant the defendants' motion to dismiss.

The initial step in the analysis of whether the plaintiffs have stated a claim for which relief can be granted requires the court to determine the requisite elements that must be contained in a claim entitled to relief under §1983. The United States Supreme Court has succinctly articulated the requisite elements:

> A claim upon which relief may be granted to respondents against Flagg Brothers under §1983 must embody at least two elements. Respondents are at first bound to show that they have been deprived of a right "secured by the Constitution and the laws" of the United States. They must secondly show that Flagg Brothers deprived them of this right acting "under color of any statute" of the State of New York. It is clear that these two elements denote two separate

areas of inquiry. Flagg Brothers v. Brooks, 436 U.S. 149, 155 (1978) (citations omitted). See also Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir.1974).

Therefore, the first issue for this court to decide is whether the plaintiffs were deprived of a right secured by the Constitution or by Federal law. Specifically, the present inquiry is whether the plaintiffs had a right in Church membership protected by the Constitution or Federal law that was abridged when they were expelled by the congregation. An evaluation of the arguments of both parties and the authority cited therein leads this court to conclude that in the present situation the plaintiffs enjoyed no right to continued Church membership that was protected by Federal law or the Constitution.

In this regard, both the analysis

and the factual situation illustrated in the Fifth Circuit's opinion in Simpson v. Wells Lamont Corp., supra, is particularly insightful on the issue of whether a federally protected right is presently implicated.

In Simpson, a pastor and his wife brought an action for damages against the Church conference, various Church officials, members of the congregation, and local public officials, asserting that his removal as pastor and his later eviction from the parsonage implicated an abridgement of his constitutional rights.

The well-reasoned opinion of the Fifth Circuit is of present pertinence. Factually, the discharged pastor had been found to be "inefficient" by the

Methodist Church Circuit, and was then relieved of his duties. After he proved adamant in his refusal to vacate the Church, Methodist officials obtained an eviction order that was executed by the local sheriff. Narrowly defining the instances where the court's intrusion into ecclesiastical matters is warranted, the court stated that:

> Only on rare occasions where there existed a compelling governmental interest in the regulation of public health, safety, and general welfare have the courts ventured into this protected (ecclesiastical) area. (citations omitted). Such incursions have been cautiously made so as not to interfere with the doctrinal beliefs and internal decisions of the religious society. Thus, the law is clear: civil courts are barred by the First Amendment from determining ecclesiastical questions. (citations omitted) (emphasis supplied) 494 F.2d at 493.

The Simpson court further confined

the extent of the court's involvement with ecclesiastical matters by rejecting the plaintiffs' invitation to attempt to find some neutral, secular principles for decision. In so rejecting this attempted relaxation of restraint, the court stated that matters of church government, as well as those of faith and doctrine, were insulated from the court's review. As a result, dismissal for lack of subject matter jurisdiction was deemed proper. 494 F.2d at 495.

In present application, this court is compelled by the First Amendment to avoid adjudicating the issue of whether the plaintiffs' expulsion was in accordance with the procedure prescribed by the Church of God of Prophecy. This is the proper conclusion even though

such adjudication may involve more procedural incidents of Church governance rather than more clearly identifiable doctrinal disputations. It is clear from the Simpson analysis that both procedural-governance questions and doctrinal disputes are constitutionally removed from this court's review. Id. at 493.

Similar decisions of the Federal courts buttress this court's above conclusion that the plaintiffs were not deprived of any rights cognizable under the Constitution or Federal law. It was decided in an early decision of the United States Supreme Court that whenever issues of discipline, faith, ecclesiastical custom, or law have been adjudicated by the highest church

judicatories, then that ecclesiastical decision is binding on the civil courts. Watson v. Jones, 13 Wall 679, 727 (1872). Further, the court in the same case opined that in language of present importance that:

> The right to organize voluntary religious associations to assist in the expression and disseminating of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. 13 Wall at 728-729.

Thus, in present application, it is clear that the plaintiffs have voluntarily submitted to be bound by the decisions of a particular religious society and that they have no recourse

for review concerning the validity of their expulsion on the issue of their gift of tongues.[1] And while it has been established that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes," it is certain that the ecclesiastical issue of the validity of the plaintiffs' speaking by inspiration of the Holy Spirit pervades the present controversy and removes it from this court's competence. See Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969). Finally, it is clear that the fact that the local church may have departed arbitrarily from its established expulsion procedures in removing the plaintiffs is of no constitutional consequence, whether one appeals the

First, Fifth, or Fourteenth Amendments. Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 714 (1976). It is the very nature of religious matters that ecclesiastical decisions are accepted as articles of faith, as opposed to the rational, objective mode of analysis and procedure used in secular decision-making. Therefore, in the present case, constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance. 426 U.S. at 715. Thus, the plaintiffs' contentions that their due process rights were violated in that their contributions to the Church were expropriated by the expulsion is of no merit.

Similarly, the above conclusion is not varied by the fact that the Church of God of Prophecy has no structured decision-making process.

Even should the court determine that the plaintiffs were deprived of a right secured by the Constitution or by Federal law, the plaintiffs would still have to show that the deprivation occurred under color of State law. Flagg Brothers, Inc. v. Brooks, supra. In the present case, this requisite element of "state action" is lacking. The plaintiffs assert that state action was present in that Virginia law[2] provides for appointment of trustees. The plaintiffs further attempt to satisfy the second requirement by characterizing the trustees act of

procuring trespass warrants and the state's subsequent prosecution as indices of state action.

In finding no present element of state action, the court notes that none of the traditional factual patterns that have been found in the past to constitute state action are present. Specifically, the present situation is not equivalent to the court enforcing an agreement or covenant affecting private parties. See Shelley v. Kraemer, 334 U.S. 1 (1948). Further, there is not the pervasive state regulation of the private entity in the instant case to warrant a finding of state action. See Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S.

163 (1972). The actions of the Commonwealth as evidenced in the above-mentioned statutory authority would not, absent a closer connection with the expulsion than the mere enforcement of the trespass law, provide the necessary state action. Sims v. Jefferson Powers, Inc., 611 F.2d 609 (5th Cir. 1980). C.f. Simpson v. Wells Lamont Corp., supra. In addition, this court is cognizant of the fact that state action has been found where private parties perform a function "traditionally exclusively preserved to the State." Jackson v. Metropolitan Edison Co., supra at 352. It is beyond controversy, however, that the operation of a religious society is not a government function.

Finally, the actions of the defendants in securing warrants for trespass

were not sufficient character for this court to find these private parties acted under color of state law. See, White v. Scrivner Corp., 594 F.2d 140 (5th Cir. 1979).

Accordingly, for the above reasons, the defendants' motion to dismiss must be granted.

ENTER:

Ted Dalton
United States District Judge

January 13, 1981

FOOTNOTES

1. Indeed, it has been established that in order to insure the "free exercise" of religion, a federal court can fashion a properly tailored injunction to prevent outside parties who are not invited onto the church property, from so entering and disrupting religious services. See Action v. Gannon, 450 F.2d 1227 (8th Cir. 1971).

2. See Code of Virginia, §57-7, §57-15 (1950, as amended).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 81-1183

Jack G. Nunn, Frances Nunn,
Iris Campbell, and Marie
Richardson,

Appellants,

versus

F. D. Black, Local Trustee,
Irvin Rector, Local Trustee,
Marshall E. Goard, Local Trustee,
W. S. Kidd, Jr., Pastor,
Allen Davis, State Overseer,
M. A. Tomlinson, General Trustee,
Leonard F. Kendrick, General Trustee,
Henry O'Neal, General Trustee,
Billy Murray, General Trustee,
M. T. Linkous, General Trustee,
of the Church of God of Prophecy,

Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Danville. Ted Dalton, District Judge.

Argued July 16, 1981
Decided August 4, 1981

Before PHILLIPS, MURNAGHAN and ERVIN Circuit Judges.

Fred D. Smith for Appellants; J. Grady Monday for Appellees.

PER CURIAM:

Appellants were arrested and convicted of criminal trespass for entering onto the property of the Church of God of Prophecy in Collinsville, Virginia, after they were expelled from its membership. Appellants then brought this action under 42 U.S.C. §1983, alleging a violation of their first amendment guarantees. The district court granted defendants' motion to dismiss and this appeal followed.

For the reasons amply stated in the opinion of the district court, we affirm. Nunn v. Black, 506 F. Supp. 444 (W.D. Va. 1981).

AFFIRMED.

APPENDIX C
PERTINENT PORTIONS OF TITLE 57 OF THE CODE OF VIRGINIA

§57-1 Act for religious freedom recited.

The General Assembly, on the sixteenth day of December, seventeen hundred and eighty-five, passed an act in the following words:

"Whereas, Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plat of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who,

being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, have established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical, and even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is

withdrawing from the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors, for the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends only to corrupt the

principles of that religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though, indeed, those are criminal who do not withstand such temptation, yet, neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rules of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time

enough for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail, if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them:

"Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested or burthened, in his body or goods, nor shall otherwise suffer on

account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

"And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies constituted with powers equal to our own, and that, therefore, to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind; and that if any act shall be hereafter passed to repeal the present,

or to narrow its operation, such act will be an infringement of natural right."

§57-7. What transfers for religious purposes valid. Every conveyance, devise, or dedication shall be valid which, since the first day of January, seventeen hundred and seventy-seven, has been made, and every conveyance shall be valid which hereafter shall be made of land for the use or benefit of any religious congregation as a place for public worship, or as a burial place, or a residence for a minister, or for the use or benefit of any church diocese, church, or religious society, as a residence for a bishop or other minister ...or for use in furtherance of the affairs of any church diocese, and the land shall be held for such uses or

benefit and for such purposes, and not otherwise. And no gift, grant, or bequest hereafter made to such church diocese, church or religious congregation, or the trustees thereof, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, or bequest in any case where lawful trustees of such church diocese, church or congregation are in existence, or the church diocese, or the congregation is capable of securing the appointment of such trustees upon application as prescribed in the following section (§57-8)...

§57-8. Appointment of trustees to effect the purposes of conveyances, etc.; validation of certain appointments. The circuit court of the county or the

circuit or the corporation court of the city, or the judge thereof in vacation, wherein there is any parcel of such land or the greater part thereof may, on the application of the proper authorities of such church diocese, religious congregation, church, or religious society or branch or division thereof, from time to time appoint trustees, either where there were, or are, none or in place of former trustees, and on such application and without notice to the trustee or trustees change those so appointed whenever it may seem to the court or judge proper to effect and promote the purpose and object of the conveyance, devise, or dedication, and the legal title to such land shall for that purpose and object be vested in

the trustees for the time being and their successors.

§57-9. How property rights determined on division of church or society. If a division has heretofore occurred or shall hereafter occur in a church or religious society, to which any such congregation is attached, the communicants, pewholders, and pewowners of such congregation, over eighteen years of age, may, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county, or circuit or corporation court of the city, wherein the property held in trust for such congregation or the greater

part thereof is; and if the determination be approved by the court, it shall be so entered in its chancery order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of this State. If a division has heretofore occurred or shall hereafter occur in a congregation, which in its organization and government is a church or society entirely independent of any other church or general society, a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice of custom, may decide the right, title

and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held.

§57-10. How trustees to hold books and furniture. When books or furniture shall be given or acquired for the benefit of such church diocese, religious congregation, church, or religious society, or branch or division thereof, to be used on such land in the ceremonies of public worship or at the residence of such bishop, or minister or clergyman, the same shall stand vested in the trustees having the legal title to the land, to be held by them

as the land is held, and upon the same trusts.

§57-11. Suits by and against trustees. Such trustees, and such as are mentioned in §§57-21, 57-22, and 57-23, may, in their own names, sue for and recover any real or personal estate held by them respectively in trust, or damages for injury thereto, and be sued in relation to the same...

§57-12. Quantity of real and personal estate trustees may hold. Such trustees shall not take or hold at any time more than four acres of land in a city or town, nor more than two hundred fifty acres outside of a city or town and within the same county... and they shall not take nor hold money, securities or other personal estate to

the extent that such taking or holding causes the money, securities or other personal estate held at the time of taking by such trustees to exceed in the aggregate, exclusive of the books and furniture aforesaid, the sum of five million dollars...

§57-13. Suits by members against trustees to compel proper application of property. Any one or more members of any church diocese or religious congregation may, in his or their names, on behalf of such church diocese or congregation, commence and prosecute a suit in equity against any such trustee to compel him to apply such real or personal estate for the use or benefit of the church diocese or congregation...

§57-14. Suits by members to have

land sold or mortgaged. Whenever the governing body of any church diocese or any religious congregation, for whose use a conveyance, devise, or dedication of land has been lawfully made, shall deem that their interest will be promoted by a sale of the whole or a part of such land, or by a mortgage thereof, or deed of trust thereon, it shall be lawful for any member of such church diocese or congregation, in his name and on behalf of the other members thereof, to prosecute a suit for either of such purposes in the cirucit court of the county, or circuit or corporation court of the city, in which such land or the greater part thereof lies...

§57-15. Proceeding by trustees or members for similar purposes. The

trustees of such church diocese, congregation, or church or religious denomination, or society or branch or division thereof, in whom is vested the legal title to such land held for any of the purposes mentioned in §57-7, may file their petition in the circuit court of the county or the city wherein the land, or the greater part thereof held by them as trustees, lies, or before the judge of such court in vacation, asking leave to sell, encumber, extend encumbrances, improve, exchange the land, or a part thereof, or settle boundaries between adjoining property by agreement...

APPENDIX D

§18.2-119 OF THE CODE OF VIRGINIA

Trespass after having been forbidden to do so. If any person shall without authority of law go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place or places where it or they may be reasonably seen, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of

§§18.2-132 through 18.2-136, and §§29-169 and 29-170 of this Code.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

JACK G. NUNN, FRANCES NUNN,)
IRIS CAMPBELL, AND MARIE RICHARDSON,)
)
Plaintiffs,)
)
vs.)
)
F. D. BLACK, Local Trustee)
of the Church of God of Prophecy,)
)
IRVIN RECTOR, Local Trustee)
of the Church of God of Prophecy,)
)
MARSHALL E. GOARD, Local Trustee)
of the Church of God of Prophecy,)
)
W. S. KIDD, JR., Pastor of the)
Church of God of Prophecy,)
)
ALLEN DAVIS, State Overseer)
of the Church of God or Prophecy,)
)
M. A. TOMLINSON, General Trustee)
of the Church of God of Prophecy,)
)
LEONARD F. KENDRICK, General Trustee)
of the Church of God of Prophecy,)
)
HENRY O'NEAL, General Trustee)
of the Church of God of Prophecy,)
)
BILLY MURRAY, General Trustee)
of the Church of God of Prophecy,)

M. T. LINKOUS, General Trustee of the Church of God of Prophecy,)
)
Defendants.)

COMPLAINT

The Plaintiffs say:

1. The Plaintiffs are citizens of the United States and residents of the State of Virginia.

2. Defendant M. A. Tomlinson, General Overseer of the Church of God of Prophecy, Bible Place, Cleveland, Tennessee, is the highest administrative official of the worldwide Church organization with which the Collinsville Church of God of Prophecy is affiliated. Defendant Tomlinson holds the position of General Overseer indefinitely and is authorized to act for the General Assembly of the Church of God of Prophecy when it is not in session. In

his capacity as General Overseer he appointed the Defendant General Trustees and Defendant State Overseer, Allen Davis. By custom and practice within the Church of God of Prophecy, no person may be dismissed from membership in the Church of God of Prophecy without permission of the General Overseer.

3. Defendants, Kendrick, O'Neal, Murray and Linkous are the General Trustees of the Church of God of Prophecy. These Defendants were appointed to the position of General Trustee by Defendant Tomlinson, who also serves as a General Trustee.

4. Defendant Allen Davis is Overseer for the State of Virginia for the Church of God of Prophecy and is appointed to that position and supervised by Defendant M. A. Tomlinson.

5. Defendants, Black, Rector and Goard are Local Trustees of the Church of God of Prophecy, Collinsville, Henry County, Virginia, as per order of the Circuit Court of Henry County, dated the 5th day of October, 1964. (Attached hereto as Exhibit #1 and made a part hereof.) Said order was entered pursuant to the provisions of the 1950 Code of Virginia, as amended, Section 57-7 through 57-17, wherein said Trustees are designated the holders of legal title to the Church property of the Church of God of Prophecy of Collinsville, Virginia, for the benefit of the membership. The Defendant Local Trustees also hold title to the church property for the use and benefit of the Church of God of Prophecy, with headquarters at Bible Place, Cleveland, Tennessee, and their

successors and assigns forever, in accordance with the governing law of the Church of God of Prophecy, Bible Place, Cleveland, Tennessee. (Relevant portions attached hereto as Exhibit #2 and made a part hereof.) The Local Trustees' action with regard to local church property must be with the consent of the General Overseer. (See Exhibit #2.)

6. Defendant, W. S. Kidd, Jr., was pastor of the Church of God of Prophecy, Collinsville, Henry County, Virginia, and was appointed to that position by the Defendant Davis and whose actions are supervised by Defendants Davis and Tomlinson.

7. By virtue of the appointive and supervisory powers of the Defendant Tomlinson and his ultimate authority over the discharge of persons from

membership within the Church of God of Prophecy, it is hereby alleged that all other named Defendants are agents of the Defendant M. A. Tomlinson.

8. Defendant Tomlinson and his agents denied Plaintiffs the First Amendment Rights of freedom of religion and freedom of speech without due process of law, by the following actions taken by Tomlinson's agents under color of the State law of Virginia:

(a) One of the fundamental beliefs of the Church of God of Prophecy, is that the Spirit can move an individual to speak at any time and at any place, and such movement of the Spirit is encouraged and condoned within the beliefs of the Church of God of Prophecy. A dispute arose between the Defendants, some members of the Collinsville Church,

and the Plaintiffs, concerning whether or not the Plaintiffs speaking in tongues was of the true Spirit. Defendants and some members of the Collinsville congregation were displeased with the fashion in which Plaintiffs believed the Spirit moved them. As a result of this dispute, a meeting was held in the Church of God of Prophecy in Collinsville, Virginia, with Defendants, Kidd and Davis, present and presiding on the 5th day of March, 1978. The purpose of the meeting was to remove Plaintiffs from membership in the Church of God of Prophecy. The Plaintiffs received no notice of the purpose of the meeting. Upon their attendance they were advised that unless they elected to refute their previous expressions of belief, a vote to expel

them would be taken. Plaintiffs were not afforded an opportunity to speak or present their views concerning the dispute. A vote was taken by Defendant, Allen Davis, by asking all who favored expulsion to stand. Ten (10) people stood. Those who opposed expulsion were asked to stand. Two people stood in opposition to expulsion. A determination of the qualifications of those present and voting at the meeting as members of the Church of God of Prophecy was never conducted by Davis and/or Kidd, eventhough approximately one hundred people were in attendance. In testimony before the General District Court of Henry County, Virginia, Allen Davis stated that he counted all those who remained seated on the vote as being in favor of expulsion. An expulsion vote

was taken eventhough the governing law of the Church of God of Prophecy provides that no votes are to be taken in resolution of disputes but rather all matters are to be resolved by unanimous consent. (Relevant portions attached hereto as Exhibit #3 and made a part hereof.) The expulsion procedure also failed to correspond with the provisions set forth in Sections 57-7 through 57-17 of the Code of Virginia, wherein the procedure for determining property rights is set forth upon the occurrence of a doctrinal dispute within a church's membership.

After this meeting Plaintiffs continued to attend services at the Church. Between November 5, 1978 and November 8, 1978, Plaintiffs were served with a notice stating that if they returned to the Church property trespass

warrants would be issued. The service of notice and threatened criminal prosecution purportedly was the decision of a congregational meeting held without notice to the Plaintiffs. Plaintiffs attended services at the Church on November 8, 1978 and November 12, 1978. Warrants were sworn to by the Local Church Trustees charging Plaintiffs with trespassing on the Church property on these two dates. The Plaintiffs were arrested; criminal arrest reports were filled out; they were photographed and brought to trial on criminal trespass charges. Their arrests were widely publicized and their subsequent convictions in the General District Court of Henry County were also widely publicized. Upon their appeal to the Circuit Court of Henry County, the

charges against the Plaintiffs were nolle prossed. Reverend W. S. Kidd advised that the Sheriff of Henry County advised him to take out trespass warrants for these offenses before the return of the Plaintiffs to the Church property and the Church Trustees appeared before a Magistrate for the Commonwealth of Virginia and swore out criminal trespass warrants and the Plaintiffs were arrested by officers of the State for these charges and prosecuted by the State's attorney in the criminal courts of the Commonwealth of Virginia.

9. Defendants likewise by the abovedescribed actions deprived Plaintiffs of their property rights without due process of law in the following respects:

(a) By virtue of Section 57-7 through 57-17 of the 1950 Code of Virginia, as amended, Plaintiffs along with the other members of the congregation are the beneficial owners of Church property and the Defendants, Black, Rector and Goard, as Trustees hold only legal title to the property for the benefit of the congregation members. The Plaintiffs were all members in good standing. They had contributed considerable sums of money to the construction, maintenance and upkeep of the Church property and the acts of Defendants through their expulsion meeting and criminal trespass prosecutions, denied the Plaintiffs of their beneficial interests in the Church of God of Prophecy's property in Collinsville, Virginia, without due

process of law.

10. The concerted acts of Defendant Tomlinson and his agent Defendants have caused damage to Plaintiffs in that:

(a) By charging the Plaintiffs with criminal offenses, they have subjected Plaintiffs to public ridicule and scorn; humiliation through their arrests, arrest processing, photographing and prosecution as violators of the criminal laws of Virginia.

(b) Defendant Tomlinson, through his agents the General Trustees, Local Church Trustees, Pastor and State Overseer, have effectively denied the Plaintiffs the right to freedom of religion, freedom of speech and the right to the enjoyment of the property held for their benefit by employing the

authority vested in them by the State of Virginia and governing laws of the Church of God of Prophecy and by resort to the state criminal process to impose their religious beliefs on Plaintiffs and deny Plaintiffs enjoyment of their own religious beliefs and enjoyment of property held for their benefit without due process of law.

11. This action arises under the United States Constitution, particularly under provisions of the First, Fifth, and Fourteenth Amendments to the United States Constitution, and under the laws of the United States, particularly under Title 42 of the United States Code, Section 1983, et seq.

12. Jurisdiction in this Court is invoked under Title 28 of the United States Code, Section 1343(3).

WHEREFORE, Plaintiffs respectfully pray:

(1) That this Court issue a preliminary or interlocutory injunction restraining the Defendants, and each of them, their agents, and employees from instituting criminal action for Plaintiffs' presence upon the Church property of the Church of God of Prophecy at Collinsville, Virginia, until such time as hearings in accordance with the dictates of the due process clause of the Fifth and Fourteenth Amendments are complied with.

(2) That each of the Plaintiffs have judgment for punitive damages against the Defendants in the amount of TWO AND ONE-HALF MILLION ($2,500,000.00) DOLLARS each.

(3) That this Court allow such costs herein and further additional relief as it may appear to the Court to be just, equitable and appropriate in the premises.

JACK G. NUNN, FRANCES NUNN, IRIS CAMPBELL AND MARIE RICHARDSON

By_____
Counsel

PLAINTIFFS' EXHIBIT 1

VIRGINIA:
IN THE CIRCUIT COURT OF THE COUNTY OF HENRY:

Ex parte: The Church of God of Prophecy, 440 South Daniels Creek Road, Collinsville, Henry County, Virginia.

Misc. #10

ORDER APPOINTING TRUSTEES

This day came the Congregation of the Church of God of Prophecy, 440 South Daniels Creek Road, Collinsville, Henry County, Virginia, and filed their application for appointment of Trustees, together with a certified copy of a resolution passed at a meeting held on the 2nd day of August, 1964.

It appearing to the Court from the Resolution of the Congregation of the Church of God of Prophecy, 440 South Daniels Creek Road, Collinsville, Henry County, Virginia, held on the 2nd day of

August, 1964, that Irvin Walton Rector, Robert C. McCoy, and Preston R. Graham, were duly elected trustees of said church, and it is the desire of the Congregation thereof that the said election be now confirmed by this Court, it is therefore ORDERED that the said Irvin Walton Rector, Robert C. McCoy, and Preston R. Graham, be and they are hereby appointed Trustees of The Church of God of Prophecy, 440 South Daniels Creek Road, Collinsville, Henry County, Virginia, they being now clothed with all the powers and privileges and subject to all the duties and the obligations conferred and imposed by law upon such trustees.

The foregoing order is requested by C. P. Kearfott, Attorney for the

Petitioners.

C. P. Kearfott

The Clerk of the Circuit Court of the County of Henry, Virginia, will enter the foregoing order, this the 5 day of October, 1964.

Jno. D. Hooker, Judge

PLAINTIFFS' EXHIBIT 2

MINUTES OF THE 74TH ANNUAL ASSEMBLY

Deeds for Church Property

The following resolution was adopted by the 58th Annual Assembly of the Church of God of Prophecy, held in Cleveland, Tennessee, September 10-16, 1963;

WHEREAS, it has been advised by competent attorneys that specific mention of proper authorities be stated in an effort to ease the complications arising in our endeavors to be recognized by the courts, and to facilitate the handlinf of deeds to our church properties.

BE IT RESOLVED that trustees to hold title to local church property for the Church of God of Prophecy with

international headquarters at Cleveland, Tennessee, be selected by the local church either in a regular or called business meeting, said trustees to be vested with authority to bargain, buy, sell, convey or encumber such property by mortgage or otherwise only when authorized to do so by the local church in regular or called business meeting, and with the consent of the General Trustees.

BE IT FURTHER RESOLVED that said consent of the General Trustees be evidenced by a separate writing or by the signature of the Chief Clerk of the said General Trustees, such documents to be notarized.

BE IT RESOLVED that state church trustees appointed by the State Overseer to hold title to property for the

Church of God cf Prophecy with international headquarters at Cleveland, Tennessee, be vested with authority to bargain, buy, sell, convey, or encumber such property by mortgage with the consent of the General Trustees. This applies to property being held by state trustees where churches have been disbanded or are too weak to function and to property which has been given to the state. All other property with title being held by state trustees may be disposed of or mortgaged only by the consent of the state convention in session.

Note: The following Warranty Deed form has been prepared by the General Trustees and should be used where it is possible to do so. Blank forms may be secured from the General Trustees.

WARRANTY DEED

FOR AND IN CONSIDERATION of the sum of _____Dollars (_____) cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, We, _____, have this day bargained and sold and by these presents do hereby bargain, sell, transfer and convey unto_____local Trustees for the Church of God of Prophecy, at_____, for the use and benefit of the Church of God of Prophecy, with headquarters at Bible Place, Cleveland, Tennessee, and their successors and assigns, the following described real-estate, to-wit:

(Add description of real estate here.)

TO HAVE AND TO HOLD said real-estate unto the said _____ local Trustees, for the use and benefit of the Church of

God of Prophecy, with headquarters at Bible Place, Cleveland, Tennessee, and their successors and assigns forever; provided, however, that neither they nor their successors in office as such local Trustees may sell, convey or encumber the said real estate without the written consent of the General Trustees of the said Church at Cleveland, Tennessee, which consent may be evidenced by a separate writing or by the Chief Clerk of the said General Trustees joining in the execution of a deed of the above named Trustees or their successors in office for the purpose of certifying the consent of the General Trustees to the execution of such conveyance.

WE COVENANT that we are lawfully seized and possessed of said real estate; that we have a good and lawful right

thus to sell and convey the same; that the title thereto is clear, free and unencumbered, and that we will forever warrant and defend said title against the lawful claims of all persons.

IN TESTIMONY WHEREOF, witness our hands and names, this ____ day of _____, 19___.

NOTE: The present General Trustees are M. A. Tomlinson, L. F. Kendrick, Henry O'Neal, Billy Murray, and M. T. Linkous. M. A. Tomlinson is chairman and Billy Murray is the chief clerk.

WORLD MUST BE EVANGELIZED

It will take good organization and systematic methods to accomplish this task.

God's power is demonstrated in proportion to the unity and oneness of His people.

The members of the early Church were

all of one accord, steadfast in the apostles' doctrine and fellowship, and the multitude that believed were of one heart and one soul, and great grace was upon them all and mighty results ...

PLAINTIFFS' EXHIBIT #3

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MINUTES OF THE 74TH ANNUAL ASSEMBLY

BUSINESS MEETING

Each local church should hold a regular business conference quarterly. It has been the practice to observe the first Monday night in January, April, July, and October for the conference. A meeting may be called any time by the pastor or State Overseer. A short business meeting may be held at the beginning or close of a meeting of worship.

The pastor should act as moderator of all business meetings. If there is no pastor, the State Overseer has authority to act or appoint a licensed male minister to preside. Where one pastor has the care of several churches, he may arrange the business meetings for his

convenience.

Every member should attend every business session if possible. Women are to take no open part in discussing or deciding questions, but should always be there and silently pray that God will give wisdom and direct the men.

Matters should be discussed with love, humility and meekness. No votes should be taken to decide questions. Everything should be done with one accord and questions settled by mutual agreement. If there is division on a matter, hold it over until all can agree. If one should seem obstinate and contrary, to not run the matter over him, but take up his case and investigate the cause of his obstinacy; if he shows a good spirit so that he can be heard, then show him courtesy. If he proves to be

wrong, deal with him as the Bible directs. Then, take up the original subject and dispose of it in harmony and love.

If a matter cannot be settled satisfactorily by the local Church, they should call for the assistance of the State Overseer. If they are still unable to reach a satisfactory conclusion, it should be referred to the General Overseer.

No one should give a message in tongues to the church unless there is an interpreter present, and then only one at a time and not more than three in a whole session.